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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Commissioner for Patents

The communication is in response to the Order Retuning Undocketed Appeal to the examiner from BPAI filed November 16, 2007. Appropriate corrections of the missing reference listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer has been made.

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Technology Center 2100

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/977,085
Filing Date: October 12, 2001
Appellant(s): MCCORMACK ET AL.

Eamon J. Wall (Reg. No. 39,414)
For Appellant

EXAMINER'S ANSWER

1.   This is in response to the appeal brief filed December 11, 2006 appealing from

the Final Office action mailed May 8, 2006 and the Advisory action mailed August 17,

2006.

Real Party in Interest

2.   The appellants' statement identifying the real party in interest contained in the

brief is correct.

Related Appeals and Interferences

3.   The examiner is not aware of any related appeals, interferences, or judicial

proceedings, which will directly affect or be directly affected by or have a bearing on the

Board's decision in the pending appeal.

Status of Claims

4.   The appellants' statement of the status of claims contained in the brief is correct.

Status of Amendments

5.   The appellants' statement of the status of amendments after contained in the

brief is correct.

Summary of Claimed Subject Matter

6.   The appellants' summary of claimed subject matter contained in the brief is

correct.

Grounds of Rejection to be Reviewed on Appeal

7.   The appellant's statement of the grounds of rejection to be reviewed on appeal is

correct.

Claims Appendix

8.   The appellants' copy of the appealed claims contained in the Appendix to the

brief is correct.

Evidence Relied Upon

6,741,853	Jiang et al.	5-2004
6,621,528	Kessler et al.	9-2003
6,092,178	Jindal et al.	7-2000
6,553,405	Deshrochers	4-2003

Grounds of Rejection

9.   The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 15-19 and 23-25 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Jiang et al. (US 6,741,853 B1) in view of Kessler et al. (US 6,621,528

B1).

As per *claim 15*, Jiang teaches a system, comprising:

a database for storing a digital identity for each of at least two user devices and

providing access to the digital identities (see col.18, lines 7-13: "the WPM retains a

database of possible devices and the device's capabilities. Negating the need for the

user to enter the device's characteristics... comprising display abilities, storage, access

method, and device identifier, among others");

a command server for storing a plurality of configuration information about each

user device and providing access to the configuration information (see Fig.7, #732:

"PMS"; col.8, lines 57-62: "The PMS recognizes different wireless devices, acquires

information, converts between different protocols and formats, organizes personal

configurations and content"); and

a digital identity server (see Fig.7) coupled to the database and the command

server (see Fig.7: via PORTAL 730) and including at least two adapters for at least two

types of user device (see Fig.7, #718 & #720; col.6, lines 48-50: "users MSs"; and col.7,

lines 5-7: "allows a plurality of devices to access services and information"), each

adapter associated with one of the types of user devices (see Fig.7, #754: "RAS" and

#742: "VOICE BROWSER"), the adapters for storing a plurality of digital identity data

associated with each digital identity, providing access to the digital identity data (SEE

Fig.7, via PORTAL 730 and col.18, lines 7-13: "the WPM retains a database of possible

devices and the device's capabilities. Negating the need for the user to enter the

device's characteristics… comprising display abilities, storage, access method, and

device identifier, among others"), and interfacing with each user device (see Fig.7 and

col.6, lines 51-55), the digital identity server configured for receiving a request from a

particular user device via one of the adapters (see col.9, lines 56-57: "(RAS) 754

provides dial-in capabilities to either an MS user 718 or landline user 720" and col.12,

lines 10-15), accessing the digital identity for the particular user device from the

database (see Fig. 7, via PORTAL 730; and col.18, lines 7-13: "the WPM retains a

database of possible devices and the device's capabilities. Negating the need for the

user to enter the device's characteristics… comprising display abilities, storage, access

method, and device identifier, among others"), accessing the configuration information

about the particular user device from the command server, applying the configuration

information to filter the digital identity (see Fig. 7, via PORTAL 730; and col.8, lines 57-

62: "The PMS recognizes different wireless devices, acquires information, converts

between different protocols and formats, organizes personal configurations and

content"), and providing the filtered digital identity to that user device via one of the

adapters (see col.5, lines 37-41: "and delivering the information").

Jiang does not explicitly teach wherein one of the user devices is a DTV client.

Kessler teaches wherein one of the user devices is a DTV client (see Fig.1 and col.3, lines 53-55: "DTV control system").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang in view of Kessler so that one of the user devices is a DTV client. One would be motivated to do so because Jiang teaches one of the "advantages of WPM is providing a single interface to the end user regardless of the type of device or access method... the present invention apply equally to other networking methods, regardless of the type or method of access" (see col.8, lines 32-37)..

As per *claim 16*, which depends on claim 15, Jiang further teaches wherein the digital identity includes at least one of a plurality of preferences, a plurality of favorites, a plurality of cookies, a set of applications, and a set of services (see col.11, lines 61-64).

As per *claim 17*, which depends on claim 15, Jiang further teaches wherein the configuration information of each user device includes at least approximations of a processing power, a bandwidth, and a memory footprint (see col.21, lines 25-29).

As per *claim 18*, which depends on claim 15, Jiang further teaches wherein the adapters include at least one of a CORBA adapter, a DTV cookie adapter, and an XML adapter (implicit: see col.10, lines 31-34).

As per *claim 19*, which depends on claim 15, Jiang teaches of further comprising: a digital identity API for the adapters (implicit: see col.9, lines 35-38 and col.12, line 60-col.13, line 3).

As per *claim 23*, which depends on claim 15, Jiang does not explicitly teach wherein the DTV client that interfaces with the digital identity server via a DTV cookie adapter.

Kessler teaches wherein the DTV client that interfaces with the digital identity server via a DTV cookie adapter (see Fig.1 and col.3, lines 53-67).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang in view of Kessler so that the DTV client that interfaces with the digital identity server via a DTV cookie adapter. One would be motivated to do so because Jiang teaches one of the "advantages of WPM is providing a single interface to the end user regardless of the type of device or access method... the present invention apply equally to other networking methods, regardless of the type or method of access" (see col.8, lines 32-37).

As per *claim 24*, which depends on claim 15, Jiang further teach wherein the client interfaces with the digital identity server via an XML adapter (see col.10, lines 31-34). Jiang however, does not explicitly teach the client device is a DTV client.

Kessler teaches that the client device is a DTV client (see Fig.1 and col.3, lines 53-55: "DTV control system").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang in view of Kessler so that one of the user devices is a DTV client. One would be motivated to do so because Jiang teaches one of the "advantages of WPM is providing a single interface to the end user regardless of the type of device or access method... the present invention apply equally

to other networking methods, regardless of the type or method of access" (see col.8,

lines 32-37).

As per *claim 25*, which depends on claim 15, Jiang further teaches wherein one

of the user devices is an external database that interfaces with the digital identity server

via a third party plug-in, wherein the external database is the database that provides

access to the digital identity to the digital identity server (see col.6, lines 57-64; col.9,

lines 10-15 & 26-30; and col.11, lines 33-42).

11.   Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Jiang et al. (US 6,741,853 B1) and Kessler et al. (US 6,621,528 B1), and further in view

of Desrochers (US 6,553,405 B1).

As per *claim 20*, which depends on claim 15, although Jiang teaches of further

comprising: at least one additional adapter (see col.6, lines 51-60), Jiang and Kessler

do not explicitly teach of writing using a digital identity SDK.

Desrochers teaches of writing using a digital identity SDK (see col.4, lines 14-

16).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify the system of Jiang and Kessler in view of Desrochers by

implementing writing using a digital identity SDK. One would be motivated to do so

because Jiang teaches that WPM 210 is a scaleable and programmable platform with

standard and open interfaces (see Jiang: col.6, lines 51-60). Thus if the need for

additional adapters were necessary, the system can be scaled to fulfill that need.

As per *claim 21*, which depends on claim 15, although Jiang further teaches wherein one of the user devices is a provisioning application that interfaces with the digital identity server (see col.6, lines 60-64), Jiang and Kessler do not explicitly teach of interfacing via a CORBA adapter.

Desrochers teaches of interfacing via a CORBA adapter (see col.4, line 1).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang and Kessler in view of Desrochers by implementing interfacing via a CORBA adapter. One would be motivated to do so because Desrochers teaches that CORBA allows virtual connections to be opened to access CORBA objects that are located on other machines (see Desrochers: col.1, lines 52-56) thereby allowing additional servers to be integrated into the system to share objects as "networks and technologies evolve" (see Jiang: col.6, lines 57-60).

As per *claim 22*, which depends on claim 15, although Jiang further teaches wherein one of the user devices is a control console that interfaces with the digital identity server (see col.7, lines 12-17), Jiang and Kessler do not explicitly teach of interfacing via a CORBA adapter.

Desrochers teaches of interfacing via a CORBA adapter (see claim 21 rejection above).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang and Kessler in view of Desrochers by implementing interfacing via a CORBA adapter. One would be motivated to do so because Desrochers teaches that CORBA allows virtual connections to be opened to

access CORBA objects that are located on other machines (see Desrochers: col.1, lines

52-56) thereby allowing additional servers to be integrated into the system to share

objects as "networks and technologies evolve" (see Jiang: col.6, lines 57-60).

12.   Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Jiang et al. (US 6,741,853 B1) and Kessler et al. (US 6,621,528 B1), and further in view

of Jindal et al. (US 6,092,178 A).

As per *claim 26*, which depends on claim 15, Jiang teaches of a digital identity

server (see claim 15 rejection above), but Jiang and Kessler do not teaches of further

comprising: a first server group and a second server group, wherein load balancing may

be performed by having the digital identity server service any user device associated

with the second server group or the second digital identity server service any user

device associated with the first server group.

Jindal teaches a first server group and a second server group, wherein load

balancing may be performed by having the digital identity server service any user

device associated with the second server group or the second digital identity server

service any user device associated with the first server group (see col.10, lines 45-60

and col.11, lines 19-35).

It would have been obvious to a person of ordinary skill in the art at the time the

invention was made to modify the system of Jiang and Kessler in view of Jindal by

implementing a first server group and a second server group, wherein load balancing

may be performed by having the digital identity server service any user device

associated with the second server group or the second digital identity server service any user device associated with the first server group. One would be motivated to do so because Jiang teaches that the "WPM maintains multiple profile schemas designed to incorporate... network resource distribution (see col.11, lines 33-36).

As per *claim 27*, which depends on claim 26, Jiang and Kessler do not teach wherein the first and second server groups are definable by a network operator.

Jindal further teaches wherein the first and second server groups are definable by a network operator (see col.7, lines 51-55).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Jiang and Kessler in view of Jindal so that the first and second server groups are definable by a network operator. One would be motivated to do so because Jiang teaches that the "WPM maintains multiple profile schemas designed to incorporate... administrative convenience, and network resource distribution (see col.11, lines 33-36).

Response to Argument

13.   The examiner summarizes the various points raised by the appellant and addresses replies individually.

14.   As per appellants' arguments filed December 11 2006, the appellant(s) argue in substance:

(a)   That the examiner erred in rejecting claims 15-19 and 23-25 under 35 U.S.C. 103(a) because there is no motivation or suggestion to combine Jiang and Kessler.

In response to (a): In regards to the appellants' argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is **some teaching, suggestion,** or **motivation to do so found either in the references themselves** or in the **knowledge generally available to one of ordinary skill in the art.** See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, although Jiang does not specifically teach a television, Jiang makes numerous suggestions throughout the reference, of incorporating **any end user device** (emphasis added) such as the DTV taught by Kessler.

Jiang teaches one of the "advantages of WPM is providing a single interface to the end user regardless of the type of device or access method... the present invention apply equally to other networking methods, regardless of the type or method of access" (see col.8, lines 32-37). Furthermore, such knowledge is generally available to one of ordinary skill in the art, in that, with the emergence of the digital revolution, devices have become mobile, more powerful, and smart. Digital cellular telephones are currently able to access the Internet and even download music videos and movies. Companies are now providing digital cable service along with telephone and Internet services, which

are channeled to the client via one line (cable or fiber optics). To exclude Kessler's

digital television as a "device" suggested by Jiang would be erroneous and improper.

(b)   That the examiner erred in rejecting claims 15-19 and 23-25 under 35

U.S.C. 103(a), because there is no reasonable expectation of success in the

combination of Jiang and Kessler.

In response to (b): In regards to the appellants' argument that there is no

reasonable expectation of success in the combination of Jiang and Kessler, the test for

obviousness is not whether the features of a secondary reference may be bodily

incorporated into the structure of the primary reference; nor is it that the claimed

invention must be expressly suggested in any one or all of the references. Rather, the

test is what the combined teachings of the references would have suggested to those of

ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this case the only missing limitation is that of the DTV taught by Kessler not the use

of the DTV control system within the system of Jiang. Jiang teaches available services

including "**video**, voice, web access, and bulk transfer..."(see col.11, lines 55-60).

There is clear and obvious expectation of success, for incorporating Kessler's DTV as a

device within the system of Jiang.

(c)   That the cited references Jiang and Kessler fail to teach or suggest "digital

identities".

In response to (c): In regards to the appellants' argument that the references fail to show "digital identity" of applicant's invention, it is noted that the features upon which applicant relies (i.e., "digital identity follows a user wherever the user may go thereby providing the user with the same electronic environment accessible from any electronic communication device"; "The digital identity include email preferences, TV preferences and preferred credit card and shipping information"; and "Digital identity data may further include a user's favorite data such as a list of favorite applications and favorite Internet sites") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nonetheless, Jiang teaches the above limitations by teaching that the WPM 210 provides MS users seamless access to information networks regardless of the type of device (see col.7, lines 12-17) by providing and maintaining a plurality of profile schemas (i.e., **user profile**, service profile, **preference profile**, **device profile**, usage profile, and logon profile) available based on a particular application or implementation (see col.11, line 43-col.12, line 5).

(d) That since claims 16-19 and 23-25 depend from independent claim 15, for at least the same reasons, these claims are patentable.

In response to (d): For the reasons in responses to (a), (b), and (c) and the rejection set forth above in the Grounds of Rejection, claims 16-19 and 23-25 were rejected.

(e)   That since claims 20-22 depend from independent claim 15, for at least

the same reasons and because Desrochers fails to remedy the deficiencies, these

claims are patentable.

In response to (e): For the reasons in responses to (a), (b), and (c) and the

rejection set forth above in the Grounds of Rejection, claims 20-22 were rejected.

(f)   That since claims 26 and 27 depend from independent claim 15, for at

least the same reasons and because Jindal fails to remedy the deficiencies, these

claims are patentable.

In response to (f): For the reasons in responses to (a), (b), and (c) and the

rejection set forth above in the Grounds of Rejection, claims 26 and 27 were rejected.

Related Proceeding(s) Appendix

15.   There are no copies of any decisions rendered by a court or the Board in any

proceedings.

16.   For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Won/

November 19, 2007

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